

Desert Family Mediation Services

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Agreement to Mediate

This is an agreement between: _____ and
_____ hereinafter "the parties" or "we" and
_____, hereinafter "mediator," to enter into mediation with
the intent of resolving issues related to certain disputed issues.

The parties and the mediator understand and agree as follows:

1. **ESTABLISHMENT OF MEDIATION RELATIONSHIP:** We wish to retain the services of mediator to mediate disputed issues. All references to "mediator" also apply to any person designated by the mediator to assist in the mediation process, such as the mediator's staff.
2. **NATURE OF MEDIATION:** We understand that mediation is an agreement-reaching process in which the mediator assists the parties to reach agreements in a collaborative, consensual and informed manner. We understood that the mediator has no power to decide disputed issues for us. The mediator's objective is to facilitate that we reach our most constructive and fairest agreement.
3. **RIGHT OF CONSULTATION WITH LAWYER:** During the mediation, the parties are each encouraged to consult or be represented by a lawyer at any time, especially before signing the final settlement agreement.
4. **MEDIATOR REPRESENTS NEITHER PARTY:** We acknowledge that the mediator does not represent the interests of either of us. We understand that the mediator may draw upon his/her experience as an attorney in acting as mediator; however, each of us understands that the mediator is not providing legal advice or otherwise acting as an attorney in the course of this mediation. We acknowledge that the purpose of mediation is to facilitate the resolution and agreement between us regarding the issues, problems, and disputes presented in mediation and that the mediator does not act as an advocate, representative, fiduciary, lawyer, or therapist for either party.
5. **IMPARTIALITY OF MEDIATOR:** We acknowledge that, although the mediator will be impartial and that the mediator does not favor either party, the mediator has a duty to assure a balanced dialogue between us and to diffuse any manipulative or intimidating tactics by either party.

6. CONFIDENTIALITY: We intend that this mediation shall be confidential. We agree that all communications between us and the mediator and any documents prepared in the course of the mediation are privileged and shall be protected from disclosure, regardless of whether the communications are made in the presence of both of us or separately. Discussions that take place outside the mediation itself and/or the presence of the mediator about the subject matter thereof are likewise privileged.

This privilege shall not be waived without the express written consent of both of us and by the mediator. In the absence of such a written consent neither of us shall subpoena the records of the mediator or seek to take testimony from him/her in connection with any civil action or proceeding, or act in any other way to divulge or cause others to divulge the records or communications to third parties.

However, this privilege shall not apply to any written agreement signed by both of us in the course of the mediation. A true copy of this Agreement may be introduced into evidence at any court proceeding in which any person seeks the disclosure of the information which is the subject of this Agreement, for the purposes of protecting the confidentiality of such information.

In the event that despite the promises set forth in this Agreement one of us attempts to subpoena the mediator or to compel the mediator to break confidentiality in violation of the terms of this Agreement, that party agrees to pay the mediator at their agreed upon mediation rate for all time reasonably spent by the mediator in protecting the mediation privilege or in being called as a witness in any proceeding.

We understand the mediator has an ethical responsibility to break confidentiality if he or she suspects another person may be in danger or harm. The only other exceptions to this confidentiality of the mediation process are with regard to the mediator's duty to report reasonable suspicion of child abuse and domestic violence; or the mediator's ability to defend him or herself in any legal action.

It is expressly agreed and understood that confidentiality in this mediation is governed by California Evidence Code sections 1115 - 1128. The mediator will supply these statutes upon request.

7. RIGHT OF MEDIATOR TO WITHDRAW: The mediator will attempt to resolve any outstanding disputes among the parties as long as both parties make a good-faith effort to reach an agreement based on fairness to both parties. Parties must be willing and able to participate in the process. The mediated agreement requires compromise, and the parties agree to attempt to be flexible and open to new possibilities for a resolution of their disputes. If the mediator, in his or her professional judgment, concludes that agreement is not possible or that continuation of the mediation process would harm or prejudice any of the participants, the mediator shall withdraw and the mediation conclude.

8. TERMINATION WITHOUT CAUSE: The mediation may be terminated without cause by any party at any time. No reason must be given. A decision to terminate mediation must be made in writing.

9. FILING OF COURT DOCUMENTS: Once an agreement is reached, in whole or in part, or at any time the parties desire to file any court documents to confirm the agreement and to obtain court order or judgment based thereon, the parties authorize the mediator to prepare and file court papers and to monitor paperwork through the court system. In performing such work, the mediator will take no action without the mutual agreement and authorization of all parties.

10. MEDIATION FEES: The parties have deposited a Retainer of \$ _____ with the mediator, whose services shall be billed at the rate of \$ ___/hour. \$410 of this is for the filing of a Petition by one party. All work performed by the mediator's assistant shall be billed at the rate of \$135/hour. There shall be a one time administrative set up fee of \$75 at the commencement of each case. Fees for mediation also include related services to be performed outside the mediation room, including telephone conferences, summaries of meetings, and the drafting of any agreements or other documents.

Regardless how the parties divide the mediator's fees as between themselves, they shall be jointly and severally liable for the mediator's fees and expenses. Checks should be made payable to "*Desert Family Mediation Services*."

If Retainer fee is exhausted we shall pay the mediator's charges as they are incurred either before each session, or after each session, as the mediator requests. Should payment not be timely made, the mediator may stop all work on our behalf, including the drafting and/or distribution of the parties' agreement(s), and may immediately withdraw from the mediation.

11. BINDING ARBITRATION: Any disputes as between the parties and the mediator regarding any aspect of our professional relationship will be resolved by binding arbitration administered through the Riverside County Bar Association. By this provision, the parties and mediator are both giving up the right to have any such dispute decided by a judge or a jury and we are each giving up the right to appeal. All costs shall be shared 50% by the mediator and 50% apportioned equally between the parties.

Under current California law a mediator has complete immunity from suits regarding negligence or malpractice or any other cause of action. This means that you cannot sue us for any damage you allege arising out of the mediation relationship.

Before signing this agreement, you have the right to consult your own attorney about the legal consequences to you.

Should it be necessary to institute any legal action or arbitration for the enforcement of this agreement, the prevailing party shall be entitled to receive all court costs

and reasonable attorneys fees incurred in such action from the other party.

12. EXECUTION OF MEDIATION AGREEMENT: By signing this Mediation Agreement, each party agrees that he or she has carefully read and considered each and every provision of the Agreement and agrees to each provision of this agreement without reservation.

Dated: _____

Desert Family Mediation Services
By:

Dated: _____

Dated: _____
